

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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DONALD RICHARD MCFADDEN,

Case No. 2:20-cv-00374-GMN-BNW

Petitioner,

ORDER

v.

BRIAN WILLIAMS, SR.,

Respondents.

Petitioner Donald Richard McFadden has submitted a 28 U.S.C. § 2254 habeas corpus petition (ECF No. 1-1). His application to proceed in forma pauperis (ECF No. 4) is granted. The court has reviewed the petition pursuant to Habeas Rule 4, and it shall be served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

1 McFadden has also submitted an ex parte motion for appointment of counsel
2 (ECF No. 1-2). There is no constitutional right to appointed counsel for a federal
3 habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v.*
4 *Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is
5 generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert.
6 denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert.
7 denied, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities
8 of the case are such that denial of counsel would amount to a denial of due process,
9 and where the petitioner is a person of such limited education as to be incapable of
10 fairly presenting his claims. See *Chaney*, 801 F.2d at 1196; see also *Hawkins v.*
11 *Bennett*, 423 F.2d 948 (8th Cir.1970). Here, the petition presents the issues arising
12 from his guilty plea that McFadden wishes to raise in a reasonably clear manner, and
13 the legal issues do not appear to be particularly complex. Therefore, counsel is not
14 justified. McFadden's motion is denied.

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17 **IT IS THEREFORE ORDERED** that petitioner's application to proceed in forma
18 pauperis (ECF No. 4) is **GRANTED**.

19 **IT IS FURTHER ORDERED** that the Clerk detach, file, and ELECTRONICALLY
20 SERVE the petition (ECF No. 1-1) on the respondents.

21 **IT IS FURTHER ORDERED** that the Clerk add Aaron D. Ford, Nevada Attorney
22 General, as counsel for respondents.

23 **IT IS FURTHER ORDERED** that the Clerk detach and file petitioner's motion for
24 appointment of counsel (ECF No. 1-2).

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26 **IT IS FURTHER ORDERED** that the motion for appointment of counsel is
27 **DENIED**.

1 **IT IS FURTHER ORDERED** that respondents must file a response to the petition,
2 including potentially by motion to dismiss, within **90 days** of service of the petition, with
3 any requests for relief by petitioner by motion otherwise being subject to the normal
4 briefing schedule under the local rules. Any response filed is to comply with the
5 remaining provisions below, which are entered pursuant to Habeas Rule 5.

6 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
7 in this case be raised together in a single consolidated motion to dismiss. In other
8 words, the court does not wish to address any procedural defenses raised herein either
9 in seriatum fashion in multiple successive motions to dismiss or embedded in the
10 answer. Procedural defenses omitted from such motion to dismiss will be subject to
11 potential waiver. Respondents should not file a response in this case that consolidates
12 their procedural defenses, if any, with their response on the merits, except pursuant to
13 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
14 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they will
15 do so within the single motion to dismiss not in the answer; and (b) they will specifically
16 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in
17 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural
18 defenses, including exhaustion, should be included with the merits in an answer. All
19 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.
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21 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
22 specifically cite to and address the applicable state court written decision and state
23 court record materials, if any, regarding each claim within the response as to that claim.
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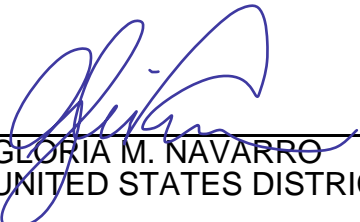
25 **IT IS FURTHER ORDERED** that petitioner has **45 days** from service of the
26 answer, motion to dismiss, or other response to file a reply or opposition, with any other
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1 requests for relief by respondents by motion otherwise being subject to the normal
2 briefing schedule under the local rules.

3 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
4 herein by either petitioner or respondents be filed with a separate index of exhibits
5 identifying the exhibits by number. The parties will identify filed CM/ECF attachments
6 by the number or numbers of the exhibits in the attachment.

7 **IT IS FURTHER ORDERED** that, at this time, the parties send courtesy copies of
8 **any responsive pleading or motion and all INDICES OF EXHIBITS ONLY** to the
9 Reno Division of this court. Courtesy copies shall be mailed to the Clerk of Court, 400
10 S. Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the
11 outside of the mailing address label. **No further courtesy copies are required unless**
12 **and until requested by the court.**

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15 DATED: 20 May 2020.

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18 GLORIA M. NAVARRO
19 UNITED STATES DISTRICT JUDGE
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